

# The Orissa Gazette



EXTRAORDINARY

PUBLISHED BY AUTHORITY

**No. 816, CUTTACK, WEDNESDAY, MAY 18, 2005/ BAISAKHA 28, 1927**

## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 30th April 2005

No.4240—li/1(BH)-167/1992-LE.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award dated the 30th March 2005 in I.D. Case No. 51/1995 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the management of Executive Engineer, Mayurbhanj Irrigation Division, Udala, district- Mayurbhanj and its workman Shri Radha Gobinda Behera was referred for adjudication is hereby published as in the scheduled below :

### SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 51 OF 1995

Dated the 30th March 2005

#### *Present :*

Shri P. K. Sahoo O.S.J.S. (Jr. Br.)  
Presiding Officer,  
Labour Court, Bhubaneswar.

#### *Between :*

The Management of  
Executive Engineer,  
Mayurbhanj Irrigation Division,  
Baripada.

. . First-party—Management

And

Its Workman  
Shri Radha Gobinda Behera

. . Second-party—Workman

#### *Appearances :*

For the First-party—Management

. . Shri S. P. Brahma

For the Second-party—Workman

. . Shri S. B. Mishra, Advocate

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AWARD

The State Government in exercise of powers conferred by sub-section (5) of section 12 read with clause (C) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the matter in dispute to this Court in the Labour & Employment Department Memo. No.1791(5)/LE. dt. 3-2-1995 for adjudication and Award.

2. The terms of reference may briefly be stated as follows :

“ Whether the termination of services of Shri Radha Gobinda Behera, N.M.R. mate with effect from 26-9-1990 by the Executive Engineer, Kalo Irrigation Division, Udala subsequently renamed as Mayurbhanj Investigation Division, Udala is legal and/or justified ? If not, to what relief Shri Behera is entitled ?”

3. Workman Radha Gobinda Behera under the present reference has challenged the legality and justifiability of the action of the management in terminating his services with effect from 26-9-1990. According to the workman, he was engaged as N.M.R. mate with effect from 1-1-1988 under the Executive Engineer, Kalo Irrigation Division, Udala, subsequently renamed as Mayurbhanj Investigation Division, Udala (in short the management). He continued to work under the management till 25-9-1990. Although he had rendered continuous uninterrupted service for more than two years but the management without any rhyme or reason terminated him from service with effect from 26-9-1990 without following the mandate of Section 25-F of the Industrial Disputes Act, 1947 (in short the Act) which was according to him, illegal and unjustified. It is further averred in the statement of claim that the management while terminating his services had neither framed any charge-sheet nor conducted any enquiry for any misconduct according to the principles of natural justice. Since the action of the management in terminating his services with effect from 26-9-1990 was illegal and unjustified, he has now prayed for his reinstatement in service with back wages and other service benefits. Hence, the reference.

4. The management, on the other hand, entered its appearance and filed written statement opposing the claim of the workman. While admitting the engagement of the workman with effect from 1-1-1988 to 20-2-1990 the management has categorically averred that the workman voluntarily abandoned the job with effect from 20-2-1990 and thereafter did not turn up for joining in duty. Since the workman left the job voluntarily at his sweet-will with effect from 20-2-1990, he is not entitled to any relief as prayed for. Accordingly the rejection of the claim of the workman has been prayed for by the management under the present reference.

5. Basing on the above pleadings of the parties, the following issues have been framed.

**ISSUES**

- (i) Whether the termination of services of Shri Radha Gobinda Behera, N.M.R. mate with effect from 26-9-1990 by the Executive Engineer, Kalo Irrigation Division, Udala, subsequently renamed as Mayurbhanj Investigation Division, Udala is legal and/or justified ?
- (ii) If not to what relief Shri Behera is entitled ?

6. The workman in support of his case has examined himself as W.W.1 but has not relied upon any document. The management on the other hand has neither examined any witness nor relied upon any document in support of its case.

**FINDINGS**

7. *Issue Nos. (i) and (ii)*—For better appreciation and adjudication of the dispute under reference, both the above issues are taken up together.

It appears from the evidence of the workman that he joined in the services of the management on 1-1-1988 at Sunei Irrigation Sub division No. (iv) as N.M.R. mate and continued to work till 25-9-1990. He had worked continuously for the period from 1988 to 1990 but the management without giving any notice or notice pay and retrenchment compensation, refused employment to him. The workman in his evidence has categorically stated that he had completed 240 days of work in 12 calendar months preceding the date of his refusal of employment. Neither any charge was framed nor any disciplinary proceeding was initiated against him. According to him such refusal of employment was illegal and unjustified. It has been suggested during cross-examination that he was not refused employment rather he voluntarily abandoned the service to which he has given a negative reply. In the present case the management has neither examined any witness nor relied upon any document in support of its case. The fact with regard to the continuous service of the workman in the establishment of management has nowhere been challenged by the management in any

manner in the evidence. In absence of any rebuttal evidence, there is no reason to disbelieve the evidence of the workman rather it is clearly evident from the evidence of the workman that he had rendered continuous service from more than two years under the management but the management without giving any notice or notice pay and retrenchment compensation illegally terminated him from service with effect from 26-9-1990, which in my view, are incomplete violation of the mandatory provisions of Section 25-F of the Act. The evidence of the workman having not been challenged by the management clearly leads me to arrive at a conclusion that the action of the management in terminating the services of the workman with effect from 26-9-1990 was illegal and justified.

8. Law is well settled that Section 25-F of the Act is mandatory and any violation thereof will render the retrenchment void *ab initio*. Compliance of Section 25-F of the Act is must, otherwise, the order of termination becomes null and void. There is no dispute that under Section 25-F of the Act a workman is entitled to one month's notice before retrenchment or one month's pay in lieu thereof. Such notice or payment in lieu thereof is a condition precedent for effecting retrenchment. But in the present case, such condition precedent has not at all been followed by the management while terminating the services of the workman. The Hon'ble Apex Court in several decisions has consistently taken the view that provisions of Section 25-F of the Act is mandatory and any violation thereof will render the retrenchment void *ab initio*. In view of the legal position, I am of the considered view that the termination having been made in violation of the mandatory provisions of Section 25-F of the Act is void *ab initio*. After carefully examining the evidence on record led by the workman and keeping in view the settled position of law, I am of the opinion that the action of the management in terminating the services of the workman with effect from 26-9-1990 was illegal, unjustified and against the mandate of Section 25-F of the Act. In such view of the matter, the workman is entitled for reinstatement.

9. The perusal of the schedule of reference clearly reveals that the workman has been terminated from service with effect from 26-9-1990 and in the meantime more than 14 years have been passed. There is no cogent evidence on record to show that the workman has been gainfully employed elsewhere with effect from the date of his termination. In such premises, the workman is entitled to be reinstated in service, but on the facts and circumstances of the present case, as the workman had not worked with effect from the date of his termination, he is entitled to get a lump sum compensation to the tune of Rs.5,000 in lieu of back wages, which in my opinion, would meet the ends of justice in the instant case. Both the above issues are answered accordingly.

10. Hence it is ordered :

That the termination of services of Shri Radha Govinda Behera, N.M.R. mate with effect from 26-9-1990 by the Executive Engineer, Kalo Irrigation Division, Udala, subsequently renamed as Mayurbhanj Investigation Division, Udala is neither legal nor justified. The workman Shri Behera is entitled to be reinstated in service with a lump sum compensation of Rs. 5,000 (rupees five thousand) only in lieu of back wages.

The reference is thus answered accordingly.

Dictated and corrected by me

P. K. SAHOO  
30-3-2005  
Presiding Officer,  
Labour Court,  
Bhubaneswar

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30-3-2005  
Presiding Officer,  
Labour Court,  
Bhubaneswar

By order of the Governor

D.MISHRA  
Under-Secretary to Government